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IN THE
COURT OF APPEALS OF INDIANA

J.A.I., JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0603-JV-201
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause No. 48D02-0502-JD-86

November 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

J.A.I., Jr. ("J.A.I.") appeals the trial court's decision adjudging him to be delinquent for committing the crime of child molesting,[1] a Class C felony if committed by an adult.[2] On appeal, he contends that there was insufficient evidence to support the trial court's true findings for child molesting.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the adjudication indicate that, on November 15, 2004, fourteen-year-old J.A.I. went to the home of his neighbor, Dana Gonzales ("Dana"), where he visited with Dana, Dana's two young sons, her four-year-old daughter S.S., and her nephew. Between 4:30 and 5:00 p.m. that afternoon, Dana decided to go to a local shop to get her youngest child's hair cut. J.A.I. agreed to babysit for S.S. and the other children in Dana's absence.

After discovering the shop was closed, Dana returned home about twenty-five minutes later and found J.A.I. sitting on the couch next to S.S. A blanket was covering S.S., and J.A.I. had his right arm around her shoulders with his right hand under the blanket. Dana noted that J.A.I. quickly removed his hand from under the blanket, seemed uncomfortable, and even offered to babysit longer if Dana wanted to go somewhere else to get her son a haircut. After Dana declined, J.A.I. went home.

Later that evening, as Dana was preparing S.S. for bed, S.S. touched Dana

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[1] *See* IC 35-42-4-3.

[2] *See* IC 31-37-1-2, which provides, "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act that would be an offense if committed by an adult . . . ."

inappropriately on her chest. This led to a discussion concerning "good touch[es] and bad touches," *Tr*. at 10, during which Dana identified the areas of the body that no one should ever touch. S.S. then indicated that J.A.I. had touched her in a private area and, when asked where, pointed to her vagina. *Id*. at 15.

The State filed a request for authorization to file a delinquency petition, which alleged in part that J.A.I., who was born on May 2, 1990, did, on or about November 15, 2004, molest four-year-old S.S. *Appellant's App.* at 14. On February 23, 2005, the trial court issued an order approving the filing of the delinquency petition. J.A.I. denied the allegation at an initial hearing. Thereafter, on July 8, 2005, J.A.I. filed a notice of alibi claiming, "[t]hat at the time of the alleged offense, [he] was not at the place of the alleged crime but was at the home of [D.B.] . . . ." *Id*. at 16.

The trial court conducted a fact-finding hearing on November 18, 2005. Dana and S.S. were witnesses for the State. Dana testified that J.A.I. babysat for S.S. on the afternoon of November 15, 2005 between 4:30 and 5:30 p.m. When Dana returned, she found J.A.I. on the couch next to S.S., who was covered by a blanket. Dana also noticed that J.A.I.'s hand was under the blanket. Later that evening, S.S. pointed to her vagina and told Dana that J.A.I. had touched her there. At the commencement of S.S.'s testimony, S.S. testified that she knew the difference between the truth and a lie. *Tr*. at 19. During the State's direct examination, S.S. testified that J.A.I. laid her down on her living room couch, used his hand to touch her underneath her underwear, and hurt her when he touched her. *Id*. at 25-26. S.S.

reported that she and J.A.I. were the only ones in the house at the time of the incident. J.A.I.'s mother, his father, his friend D.B., and D.B.'s mother testified at the hearing in support of J.A.I.'s alibi that he could not have been at Dana's home on November 15, 2004 during the time in question.

At the close of the hearing, the trial court noted the conflict in the testimony but stated, everybody was "telling the truth to the best of their recollection." *Id*. at 48. Even so, the trial court stated that it must "do what a jury must do to make a determination when there is a conflict as to who the Court will believe and who the Court will not believe." *Id*. Thereafter, the trial court found that J.A.I. "did on the 15th day of November, 2004, engage in conduct which if committed by an adult would be child molesting." *Id*. The trial court found J.A.I. delinquent on this charge, and he now appeals.

DISCUSSION AND DECISION

J.A.I. contends that the evidence was insufficient to support the trial court's true finding of child molesting. Our standard of review regarding sufficiency of the evidence claims is firmly established. *Armour v. State*, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), *trans. denied*; *R.L.H. v. State*, 738 N.E.2d 312, 315 (Ind. Ct. App. 2000). When the State seeks to have a juvenile adjudicated to be a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. *Al-Saud v. State*, 658 N.E.2d 907, 908-09 (Ind. 1995); *D.B. v. State*, 842 N.E.2d 399, 401 (Ind. Ct. App. 2006); *R.L.H.*, 738 N.E.2d at 315 (citing IC 31-37-14-1). On appeal, we do not reweigh the evidence or judge the credibility of witnesses, but, instead, look to the evidence most favorable to the conviction and to all the reasonable inferences to

be drawn therefrom. *D.B.*, 842 N.E.2d at 401; *Armour*, 762 N.E.2d at 215; *R.L.H.*, 738 N.E.2d at 315. We will affirm the conviction if the evidence contains adequate probative value from which a reasonable fact finder could infer guilt beyond a reasonable doubt. *Goliday v. State*, 708 N.E.2d 4, 5 (Ind. 1999); *Al-Saud*, 658 N.E.2d at 908-09; *Armour*, 762 N.E.2d at 215. Circumstantial evidence is no different than other evidence for this purpose, and standing alone it may sufficiently support a conviction. *R.L.H.*, 738 N.E.2d at 315.

J.A.I.'s claim of insufficient evidence arises from his having filed a notice of alibi concerning the date of the alleged offense. While recognizing that the "filing of an alibi defense does not impose a greater burden of proof on the State than would otherwise be required," *McNeely v. State*, 529 N.E.2d 1317, 1321 (Ind. Ct. App. 1988), J.A.I. contends that "an alibi defense does make the time of an alleged offense of the essence." *Id.*

The petition alleging delinquency asserted that J.A.I., who was born on May 2, 1990, did, on or about November 15, 2004, perform or submit to fondling or touching of four-year-old S.S. in violation of IC 35-42-4-3. J.A.I. filed a notice of alibi to which the State did not respond. The State, however, is not required to respond to an alibi notice if it intends to rely on the date and place alleged in the petition. *See Johnson v. State*, 734 N.E.2d 530, 531 (Ind. 2000) (State not required to respond to alibi notice if it intends to rely on date and place alleged in information.)

IC 35-42-4-3 provides:

> A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony.

J.A.I. does not claim that the State failed to prove the elements of the crime. Instead, he contends that the State failed to prove beyond a reasonable doubt that the offense was committed on November 15, 2004 as asserted in the petition alleging delinquency.

Dana testified that the molestation occurred at her house between 4:30 and 5:30 p.m. on November 15, 2004. J.A.I.'s alibi witnesses testified that J.A.I. was not at Dana's house either at the hour or on the day of the alleged offense. The trial court recognized the conflict in testimony and, noting its duty to "make a determination when there is a conflict as to who the Court will believe and who the Court will not believe," *Tr*. at 48, chose to believe Dana and S.S.

J.A.I.'s argument is an invitation for this court to reweigh the evidence, which we decline. We remind J.A.I., "'it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.'" *D.B.*, 842 N.E.2d at 402 (quoting *K.D. v. State*, 754 N.E.2d 36, 38 (Ind. Ct. App. 2001)). The evidence was sufficient for the trial court to adjudge J.A.I. to be delinquent for committing the crime of child molesting, a Class C felony if committed by an adult.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.